

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

AARON D. SEYMOUR,

Plaintiff,

v.

LEDBETTER,

Defendant.

Case No.: 1:22-cv-00989-JLT-CDB (PC)

**ORDER VACATING FINDINGS AND  
RECOMMENDATIONS TO DISMISS  
ACTION WITHOUT PREJUDICE FOR  
PLAINTIFF'S FAILURE TO OBEY  
ORDERS AND FAILURE TO PROSECUTE**

(Doc. 40)

Plaintiff Aaron D. Seymour is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds on Plaintiff's First Amendment retaliation and Eighth Amendment failure to protect claims against Defendant Ledbetter.

**I. RELEVANT PROCEEDURAL HISTORY**

On January 16, 2024, the Court issued its Discovery and Scheduling Order. (Doc. 35.)

On November 25, 2024, Defendant timely filed a motion for summary judgment challenging the merits of Plaintiff's claims. (Doc. 36.)

On December 27, 2024, when more than 21 days passed without a response from Plaintiff to Defendant's pending summary judgment motion, the Court issued its Order to Show Cause (OSC) in Writing Why Sanctions Should Not Be Imposed for Plaintiff's Failure to File an Opposition or Statement of Non-Opposition. (Doc. 38.) Plaintiff was directed to file a written response to the OSC, or alternatively, to file an opposition or statement of non-opposition to the

summary judgment motion within 14 days. (*Id.* at 3.)

On January 17, 2025, when more than 14 days had passed without a response from Plaintiff to the OSC, the Court issued Findings and Recommendations to dismiss this action without prejudice for Plaintiff's failure to obey court orders and failure to prosecute. (Doc. 40.) The parties were advised that any objections were due within 14 days. (*Id.* at 4-5.)

On January 24, 2025, Plaintiff filed an opposition to Defendant's motion for summary judgment. (Doc. 41.)<sup>1</sup>

## II. DISCUSSION

The Court will vacate its Findings and Recommendations issued January 17, 2025. Because Plaintiff has filed an opposition to Defendant's summary judgment motion, Defendant has an opportunity to file a reply to Plaintiff's opposition. *See* Local Rule 230(l). The motion will be deemed submitted with the filing of any reply or the expiration of the deadline for doing so. *Id.*

## III. CONCLUSION AND ORDER

For the reasons given above, the Court **HEREBY ORDERS:**

1. The Findings and Recommendations issued January 17, 2025 (Doc. 40) are **VACATED**; and
2. Defendant shall file any reply to Plaintiff's opposition in accordance with Local Rule 230(l).

IT IS SO ORDERED.

Dated: January 28, 2025

  
UNITED STATES MAGISTRATE JUDGE

<sup>1</sup> Plaintiff's filing is dated and signed January 19, 2025. In an attached "Declaration," Plaintiff states a lack of staff in the law library at his place of confinement, coupled with COVID-19 restrictions, caused him to file his opposition late.